

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 RICHARD SNYDER,) CASE NO. CV 12-4570-PJW
11 Petitioner,)
12 v.) MEMORANDUM OPINION AND ORDER
13 D. LONG, WARDEN,) DISMISSING PETITION AND DENYING
14 Respondent.) CERTIFICATE OF APPEALABILITY
15 _____)

16 Before the Court is a Petition for Writ of Habeas Corpus in which
17 Petitioner claims that the trial court violated his right to counsel
18 of choice when it denied his motion for a continuance to allow him
19 time to hire private counsel. For the following reasons, the Court
20 concludes that the state supreme court's conclusion that the trial
21 court did not violate Petitioner's right to counsel was not contrary
22 to clearly established United States Supreme Court precedent. As such
23 the Petition is DENIED.

24 I.

25 SUMMARY OF PROCEEDINGS

26 1. State Court Proceedings

27 On May 4, 2009, Petitioner was arrested in West Covina in
28 connection with the burglary of a home. (Clerk's Transcript ("CT"))

1 24-25, 56.) He was appointed counsel, a deputy public defender. On
2 May 18, 2009, he appeared for a preliminary hearing and was ordered
3 held over for trial. (CT 1-21.) Trial was set for June 29, 2009.
4 (CT 28.) On June 25, 2009, a commissioner held a "readiness" hearing
5 during which Petitioner's counsel and the prosecutor announced that
6 they were ready for trial. (CT 44.) According to the minute order
7 from that hearing, Petitioner was not present at that hearing and his
8 counsel waived his presence. (CT 44.)

9 On June 29, 2009, Petitioner appeared with counsel for trial. He
10 and his lawyer requested that the trial be continued so that
11 Petitioner could hire private counsel. (Reporter's Transcript ("RT")
12 2-3, 5-6.) Petitioner explained that his brother, who lived in
13 Minnesota, had contacted a lawyer and had discussed hiring the lawyer
14 to represent Petitioner but had not yet hired the lawyer. (RT 5-6.)
15 Petitioner's counsel noted that the case was relatively new and that
16 this was Petitioner's first request for a continuance. (RT 3.)

17 The trial court denied the motion, explaining that it was not
18 persuaded that Petitioner's brother would hire counsel. (RT 6-7.) It
19 also noted that the motion was untimely, was not in writing, and did
20 not set forth good cause. (RT 7.)

21 The jury trial began that day and ended three days later, on July
22 2, 2009, when the jury convicted Petitioner of burglary, petty theft
23 with priors, grand theft, and possession of ammunition by a felon.
24 (CT 130-33, 139-40.) The jury also determined that Petitioner had
25 prior "strikes" under California's Three Strikes law and had served
26 time in prison. (CT 134-35, 140-41.) The trial court sentenced him
27 to 35 years to life in prison. (CT 169-70, 173-75.)

28

1 Petitioner appealed to the California Court of Appeal, which
2 affirmed the judgment. (Lodged Document Nos. 4-7.) He then filed a
3 petition for review in the California Supreme Court, which was denied.
4 (Lodged Document Nos. 8-9.) Thereafter, he filed habeas corpus
5 petitions in the Los Angeles County Superior Court, the California
6 Court of Appeal, and the California Supreme Court, which were denied.
7 (Lodged Document Nos. 10-15.)

8 2. Federal Court Proceedings

9 In May 2012, Petitioner, acting on his own behalf, filed a
10 Petition for Writ of Habeas Corpus in this court, pursuant to 28
11 U.S.C. § 2254, claiming that the trial court effectively denied him
12 the right to counsel of his choice when it denied his motion for a
13 continuance so that he could retain private counsel. (Petition at 5-
14 6a.)

15 II.

16 STATEMENT OF FACTS¹

17 At 2:28 p.m., on May 4, 2009, West Covina Police
18 Officer Jonathan Alexander was patrolling in his marked
19 police car when he saw a "suspicious vehicle" parked in the
20 driveway of his residence. The driver's side of the car was
21 vacant, and the driver's door was open. A woman was sitting
22 in the passenger seat. When Officer Alexander saw his
23 personal property in the car, he radioed for backup for a
24 suspected burglary in progress at his house.

25
26
27 ¹ The statement of facts was taken verbatim from the California
28 Court of Appeal's opinion affirming Petitioner's conviction.
(Lodgment No. 7.)

When backup arrived, Officer Alexander arrested the woman. He entered his house and saw that several rooms were ransacked. He also saw a black duffle bag filled with thousands of dollars of his property. Within several minutes, other officers arrived. One officer saw [Petitioner] come out from the backyard carrying a black duffle bag and told him to freeze. Instead, [Petitioner] fled, but was found hiding in a nearby apartment area. He gave a false name to the arresting officers.

[Petitioner] claimed that he had a drug problem and was supposed to meet his drug supplier, Tim Murphy, at Officer Alexander's house to procure drugs. [Petitioner] said that Murphy went into the house, and, when he was taking too long, [Petitioner] got out of the car to look for him. [Petitioner] never entered the residence or took anything. He ran from the police and gave them the false name because he had outstanding arrest warrants.

(Lodgment No. 7 at 2-3.)

III.

STANDARD OF REVIEW

In order to prevail, Petitioner has the burden of establishing that the state supreme court's ruling--that the trial court's decision to deny his request for a continuance did not violate his right to counsel of choice--was contrary to clearly established federal law. 28 U.S.C. § 2254 (d). A decision is "contrary to" clearly established federal law if it applies a rule that contradicts Supreme Court case law or if it reaches a conclusion different from the Supreme Court's in a case that involves facts that are materially indistinguishable.

1 *Premo v. Moore*, 131 S. Ct. 733, 743 (2011) (citing *Bell v. Cone*, 535
2 U.S. 685, 694 (2002)). To establish that the state court unreasonably
3 applied federal law, a petitioner must show that the state court's
4 application of Supreme Court precedent to the facts of his case was
5 not only incorrect but objectively unreasonable. *Renico v. Lett*, 130
6 S. Ct. 1855, 1862 (2010). Where the Supreme Court has not squarely
7 addressed an issue, a state court's adjudication of it cannot result
8 in a decision that was contrary to, or an unreasonable application of,
9 Supreme Court precedent. See *Harrington v. Richter*, 131 S. Ct. 770,
10 786 (2011).

11 Petitioner raised his claim in a petition for review in the
12 California Supreme Court, but that court did not explain its reasons
13 for denying it. The appellate court, however, did in rejecting this
14 same claim on appeal. (Lodged Document No. 7.) The Court presumes
15 that the state supreme court rejected Petitioner's claim for the same
16 reasons that the appellate court did. The Court will not disturb that
17 decision unless it concludes that no "fairminded jurist" would find it
18 to be correct. See *Richter*, 131 S. Ct. at 786.

19 IV.

20 DISCUSSION

21 Petitioner claims that he was denied his right to counsel of
22 choice when the trial court denied his motion for a continuance to
23 allow him to hire private counsel. (Petition at 4-5; Exh. A, Attached
24 Brief ("Brief") at 19-28.) For the reasons set forth below, the Court
25 finds that the state court's decision rejecting this claim is not
26 contrary to clearly established Supreme Court precedent.

27 Under the Sixth Amendment to the United States Constitution,
28 criminal defendants have a right to retain counsel of their own

1 choice. *Bradley v. Henry*, 510 F.3d 1093, 1096 (9th Cir. 2007) (en
2 banc). This right is not absolute, however, and trial judges have the
3 power to balance a defendant's right to counsel of choice with, among
4 other things, the demands of their calendars. See *Morris v. Slappy*,
5 461 U.S. 1, 11-12 (1983); see also *United States v. Gonzalez-Lopez*,
6 548 U.S. 140, 152 (2006) (allowing trial courts "wide latitude in
7 balancing the right to counsel of choice against the needs of
8 fairness, and against the demands of its calendar" (internal citation
9 omitted)). To establish a violation of this right, a petitioner must
10 show that the trial court abused its discretion by making an
11 unreasonable and arbitrary decision that placed expeditiousness over a
12 justifiable request for a delay. *Houston v. Schomig*, 533 F.3d 1076,
13 1079 (9th Cir. 2008). Where, as here, a defendant requests a
14 continuance on the day of trial to hire new counsel, has not hired
15 counsel, yet, and appointed counsel is prepared to proceed with the
16 trial, the Ninth Circuit has held that the trial court's refusal to
17 grant a continuance does not violate a defendant's Sixth Amendment
18 right to counsel of choice. See *Miller v. Blacketter*, 525 F.3d 890,
19 896-98 (9th Cir. 2008).

20 The trial court denied Petitioner's request to continue the trial
21 to allow him to hire private counsel because he had waited until the
22 day of trial to make his request and had not yet hired private
23 counsel. (RT 6-7.) The court also noted that the motion was oral,
24 not in writing, as required by court rules, and was not supported by
25 good cause. (RT 7.) Further, as evidenced by defense counsel's
26 representation four days earlier that he was ready for trial as well
27 as his performance at trial, appointed counsel was obviously ready to
28 proceed.

There is no Supreme Court precedent holding that, in the context of the trial court's decision to deny Petitioner's motion for a continuance in this case, Petitioner's right to counsel of choice was violated. In fact, Petitioner has not cited any federal cases holding that a trial court's failure to grant a continuance under these circumstances was unconstitutional. And the Court has not found any such cases on its own. Absent such a decision, Petitioner cannot prevail in this court. *Premo*, 131 S. Ct. at 743.

Petitioner cites a series of state cases that speak in generalities about affording a defendant the right to choose counsel. Some of these cases rely on United States Supreme Court cases to support their holdings. But the state cases are not controlling here and the Supreme Court cases they rely on are not on point.

In the end, the Court does not see this as a case involving the Sixth Amendment or the federal cases that have interpreted it. Rather, what comes through in Petitioner's briefs is the fact that he believes that the trial court abused its discretion in not granting his motion to continue the trial to retain new counsel. Though the Court sympathizes with Petitioner's plight and recognizes that this was a very serious case (ultimately resulting in a 35-years to life sentence) and that the motion was Petitioner's first in a case that had moved along relatively quickly, this Court is not empowered (or inclined) to review state trial court decisions for abuse of discretion. For these reasons, Petitioner is not entitled to relief.

III

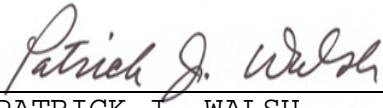
CONCLUSION

For the reasons set forth above, the Petition is denied and the action is dismissed with prejudice. Further, the Court concludes that

1 a Certificate of Appealability is not warranted in this case because
2 the issue raised here is not fairly debatable. See Federal Rules
3 Governing Section 2254 Cases, Rule 11 ("The district court must issue
4 or deny a certificate of appealability when it enters a final order
5 adverse to the applicant.").

6 IT IS SO ORDERED.

7 DATED: January 2, 2013.

8 
9 PATRICK J. WALSH
10 UNITED STATES MAGISTRATE JUDGE